

ENCLOSURE 2

Written Public Comment Submittals Prior to 1/30/07

(Letters attached following the Response to Comments)

1. Dennis Hall, California Department of Forestry and Fire Protection
2. Mark Shadowens, Lake Tahoe Regional Fire Chiefs Association
3. Carl Young, League to Save Lake Tahoe
4. Dr. Cajun James, Sierra Pacific Industries
5. Carol Kennedy, US Forest Service
6. Sharon Duggan, Environmental Protection Information Center (EPIC)
7. Michael Donahoe, Tahoe Area Sierra Club (newly added to Response to Comments)

RESPONSE TO COMMENTS
AMENDED 1/30/07

Resolution R6T-2007-(PROPOSED)

**Waiver of Waste Discharge Requirements for Discharges Related to Timber
Harvest Activities**

and

**Implementation, Forensic and Effectiveness Monitoring and Reporting Program
for Individual Discharges Related to Timber Harvest Activities**

Commenter: Dennis Hall, California Department of Forestry and Fire Protection

Comment #1: Recommendation to remove noncommercial PRC 4291 firesafe projects from the Timber Waiver, or create separate categories for projects regulated under PRC 4291. Concerned that requiring a submittal for 100-foot defensible space projects would discourage people from conducting defensible space work on their properties.

Response: One goal of the waiver is to improve efficiency in obtaining approval for firesafe work, while still protecting water quality. The draft waiver has a stipulation stating that "...Firesafe treatments within 150-feet of existing structures are not required to submit notice to the Water Board...These projects must [still] adhere to Basin Plan Prohibitions..." The Renewed Timber Waiver will be revised so that noncommercial defensible space projects conducted within 150-feet of existing structures regulated under PRC 4291 also do not need to submit notice to the Water Board. We would like to work with CDF/BOF to modify the 4291 Guidelines to include information for homeowners who live near creeks to better ensure compliance with Basin Plan prohibitions.

Comment #2: Category 2 projects require either a Registered Professional Forester (RPF) and/or Biologist, allowing fewer resources to conduct the fuels reduction work, and possibly discouraging activity under PRC 4291.

Response: Category 2 and higher projects involve work in sensitive areas where mitigation measures and forestry prescriptions must be developed to ensure no potentially negative impacts to water quality and beneficial uses will occur. Staff believes it is necessary to have a specialist analyze potential project impacts and help to develop protective measures. Monitoring requirements in Categories 2-5 will also help to ensure that no negative impacts will occur to these sensitive areas. PRC 4291 projects (areas within 100 feet of structures) should not be impacted because these projects fall under Category 1, which does not require an RPF or monitoring requirements. Larger non-USFS fuels hazard reduction projects can qualify for category 1b if the 16 conditions listed under that category are met, otherwise the project will be regulated under Category 2-4.

Comment #3: Concern about PRC 4291 projects being subject to monitoring and 30-day review.

Response: The draft Waiver has been revised to include PRC 4291 under Category 1, which does not require monitoring or 30-day review.

Commenter: Mark Shadowens, Lake Tahoe Regional Fire Chiefs Association

Comment #1: The proposed waiver requires additional permitting and monitoring. Hand thinning projects should be excluded from any additional permitting and monitoring requirements. The timber waiver should contain a condition that allows for use of innovative technology equipment later on after demonstration projects confirm no water quality impacts.

Response: Additional permitting is not being required by renewing the Timber Waiver. The Water Board is required by law to regulate all potential nonpoint source discharges that may impact water quality. Forestry activities fall within this category. The action of the Water Board adopting a waiver will allow for expedited permitting of projects posing minimal environmental threats. Without the waiver, every project that has the potential to affect water quality would have to seek Individual Waste Discharge Requirements (WDR's) from the Water Board. Dischargers would have to pay a fee and wait for (limited) staff to review their project, prepare a board packet, conduct public noticing, and seek project approval at a Water Board hearing. The action of having a waiver will save project proponents time and money and allow staff to focus on projects posing the greatest threats to water quality. In regards to hand thinning work, please see our response to Comment #5. Any work within SEZs, whether utilizing innovative technology or not, will require a submittal to the Water Board for staff to ensure water quality is protected. However, the timber waiver can cover activities using innovative technology as a demonstration project or, where evidence indicates no adverse water quality impacts will occur if properly implemented. These types of projects will likely require an individual monitoring program. When scientific evidence comes out regarding the appropriate use of an innovative technology, a basin plan update will be required. The Timber Waiver can be amended appropriately after that time.

Comment #2: Eliminate 30-day review period for Water Board staff.

Response: Project planning should incorporate some regulatory review time. Thirty days is a very standard amount of review time. Staff resources are limited and projects that could have significant impacts to water quality might be conducted without adequate water quality protection if staff were not given adequate time to review projects. Staff has proposed that projects falling under Category 1a and 1b can commence upon receipt of the waiver application, since these projects are considered very low impact. Many defensible space projects fall under Category 1a or 1b. Projects falling under Categories 2-5 require up to 30 days to provide staff with adequate time to review potential impacts and to ensure the project qualifies for the waiver. You may receive notification to proceed before the 30 days have passed. Projects that have already completed the CDF Interdisciplinary Review Team Process are exempt from the review period if Water Board staff was a member of the Review Team. However, NTMPs require 30 days because these plans last for many years, and staff is likely not to have been involved in developing the plan. Projects that are out of the scope of the

waiver (i.e. pose the potential for significant impacts) will have to seek individual WDR's from the Water Board.

Comment #3: Recommendation to include shaded fuelbreaks and defensible fuel profile zones (DFPZ) under category 1A, where no notification to the Water Board is required.

Response: The quantity of land involved for these types of projects is potentially immense given the regional and national focus on conducting fuels hazard reduction work. Furthermore, they have the potential for significant water quality impacts. Since these projects are performed within the urban interface where water quality impacts already exist, qualifying these projects under Category 1A with no notification to the Water Board would not ensure water quality protection.

Comment #4: Allow work in SEZs and steep slopes to qualify under category 1.

Response: Our mandate is to protect water quality. By expanding Category 1 to include projects with operations within WLPZs and SEZs, we could potentially not be aware of threats to water quality, adequate mitigation measures might not be implemented, and Basin Plan requirements may not be met. These projects are not suitable for Category 1, which is intended for very low potential impact projects. Note that grading restriction variances may be granted if conditions are dry after October 15th.

AMENDMENT TO RESPONSE as of 1/30/07: *After holding meetings with Fire Districts, Water Board staff amended Category 1 of the draft Timber Waiver to include hand-thinning in SEZs, WLPZs, and on slopes over 60%. The reason for this is to encourage hand thinning activities in sensitive areas, which has less impact than mechanized equipment. Hand thinning is generally the most practical method of vegetation removal around structures as well, and will be widely utilized by fire districts assisting with defensible space and fuels hazard reduction projects.*

Staff has proposed specific additional conditions within Category 1 to help ensure water quality protection, such as the use of an RPF, limits on operating conditions, and other protective measures. The Certification/Application for the waiver will require an explanation as to how these conditions will be met. Furthermore, a post-project certification will be required (similar to that required in the monitoring program for "Implementation Monitoring") to confirm that all projects were conducted in conformance with all applicable approved plans and the Certification/Application, and will meet Basin Plan requirements.

Comment #5: Exclude hand-thinning projects from monitoring requirements.

Response: Although hand thinning can be less impactful, staff has seen impacts from hand thinning operations (soil compaction from multiple passes of hand crews, soil erosion on paths from runoff, increased flow paths, vegetation and soil disturbance related to inappropriately sized or location of burn piles, excessive thinning of riparian canopy). Simple monitoring such as inspections to ensure BMPs are implemented and photo-monitoring can aid significantly in reducing potential impacts. Note that hand thinning over-snow (outside of SEZs) has been added to Category 1.

Commenter: Carl Young, League to Save Lake Tahoe

Comment: General support for policy and monitoring program. Concern about adequate resources for field inspections to confirm self-monitoring reports, and for conducting enforcement. Recommendation to require water column sampling (pre/post project and during storm events) and to require soil health/strength assessments.

Response: Comments noted. In regards to staff resources, our Monitoring and Reporting program is designed to provide Water Board staff with information to help them to focus on the highest priority sites. Furthermore, by developing a waiver containing general eligibility criteria and conditions, rather than requiring every single project (specifically the ones posing minimal water quality threats) to go to our Board to get individual WDRs, significant staff resources are saved. This way staff can focus its limited resources on projects posing the greatest potential for environmental impacts.

In regards to water column monitoring, staff has observed that it can be expensive and sometimes inconclusive because of the variables encountered such as streamflow, access, timing of sampling in relationship to storm event or BMP failure. Reliance on inspections and visual monitoring of mitigation measures and requiring corrective actions should prevent adverse water quality impacts from occurring. For larger projects on a watershed scale, or where discharges have been observed, water column monitoring may be required. Soil testing has been required for demonstration projects where innovative technologies are being studied. The Executive Officer has the authority to impose additional monitoring where warranted to ensure water quality protection.

Commenter: Dr. Cajun James, Sierra Pacific Industries

Comment #1: Within each Timber Harvest Plan (THP), a Water Course Crossing Inventory Table is submitted. SPI would like to use this document in lieu of submitting a separate inspection plan for each THP, as required in the proposed Timber Waiver Monitoring and Reporting Program (MRP).

Response: The table and inventory alone would not provide sufficient detail for staff to evaluate the monitoring. Maps are needed to describe the specific location of monitoring points for each project, and for Water Board staff to evaluate overall project impacts.

Comment #2: The SPI letter notes that "In order to increase effectiveness and efficiency, and to minimize the potential for resource damage to our roads, our forensic monitoring will begin at the lowest point of each watershed inspected." If nothing is seen, monitoring will not continue further up in the watershed.

Response: Looking only at the bottom of the road would not identify partially failed crossings and mitigation measures installed upstream that could result in future significant sediment inputs. Where access allows, visual inspections should occur at all areas where potential sediment inputs could occur, as specified in the MRP. The MRP accounts for occasions when access is not feasible due to weather, worker safety, and other factors.

Comment #3: The SPI letter notes "Any failure of mitigation measures (or natural events) that result in a noticeable discharge, greater than 10 cubic yards, and which are discovered as a result of forensic monitoring will be examined and recorded."

Response: The proposed Timber Waiver requires photo monitoring after 3 cubic yards of discharge. Water Board staff does not consider 10 cubic yards to be an insignificant discharge. See additional language added to the MRP requiring photo-monitoring of visible sediment deposits on streambed.

Comment #4: The SPI letter notes when they intend to submit reports throughout the year.

Response: You must follow the schedule contained within the adopted MRP, unless the Executive Officer imposes an individual monitoring program. The proposed MRP specifies semi-annual reporting with submissions in mid-January and mid-July. The January submission shall document the results of implementation monitoring. Implementation monitoring reports that identify locations where mitigation measures were not implemented or fail to report whether measures were in place or effective, will allow our staff to prioritize field inspections during the following spring/summer/fall seasons. This will also allow Water Board management to develop appropriate workplans for the next fiscal year.

Commenter: Carol Kennedy, US Forest Service

Comment #1: Define burned area rehabilitation. Need to perform burned area rehabilitation in a timely manner and we cannot wait 30 days for agency review.

Response: BAER activities may proceed without any delays in regards to submittal of Timber Waiver certification documents to the Water Board. The Water Board requests immediate notification (by phone, email, fax, etc) any time BAER activities are initiated within the Lahontan Region. These projects will still require enrollment under the Timber Waiver program, however there will be no delays in implementation. Materials must be submitted within 60 days of initiation of BAER activities, unless reasonable justification is provided for further delays (e.g., staff is still in the field doing emergency response or erosion control). Non-emergency post-fire treatments shall be conducted under the guidelines of Waiver categories 1-5. The above changes will be incorporated in to the Draft Timber Waiver for both federal and non-federal entities. The USFS is encouraged to provide us with a definition of BAER, so we may utilize it for a new waiver category.

Comment #2: Why are waivers required for small non-commercial fuel hazard reduction and forest enhancement projects, or ridgetop and upland projects?

Response: Water Board staff has seen negative water quality impacts from all sizes of projects, both commercial and non-commercial. In regards to ridgetop projects, there could be significant water quality impacts from road systems used, or created, to access ridges. It is true that projects on flat ground, away from streams, and with limited heavy equipment use, may not have any potential threats to water quality. We recommend contacting Water Board staff by phone or email to discuss whether you will need a waiver for a project where you believe there will be no potential threats to water quality.

Comment #3: Are there enough staff resources to handle the increased workload for the waiver?

Response: It is true that staff resources are limited. However, we are required by law to regulate all potential nonpoint source discharges, and in regards to forestry in our region, we believe a waiver is the most efficient and effective way to do it. By developing a waiver containing general eligibility criteria and conditions, rather than requiring every project proponent to obtain individual WDRs (requiring Board approval), significant staff resources are saved. This way staff can focus more energy on projects posing the greatest potential for environmental impacts.

Comment #4: The waiver needs to include language that allows for an exemption from the 30 day review period for projects that are implemented within a few years after NEPA documents have been approved.

Response: First, most USFS NEPA forestry documents contain very large project areas without sufficient details regarding mitigation and project implementation. Especially for projects implemented years after planning documentation is done, changes are often incorporated on the ground for individual projects. Specific project plans are not developed until very close to project implementation when contracts are awarded. Water Board staff can't fully evaluate potential project impacts until we review these final (or close to final) planning documents. Furthermore, watershed, legal, and institutional changes may occur when there are significant time lags between NEPA approval and project implementation. Additional mitigation measures usually do not require recirculation of a NEPA document. Unless there are extenuating circumstances, if the USFS accounts for the 30-day review time, there will be few delays due to Water Board activity.

Comment #5: Why can't we use the BMPEP program in lieu of the proposed MRP?

Response: The Water Boards have significant concerns about the effectiveness of the BMPEP. A letter signed by several Regional Board Executive Officers was submitted to the USFS Regional Office recommending changes to the program. Until these changes occur, we believe that project level monitoring is appropriate. Although, in the spirit of efficiency, we may be able to come to agreement on an updated form or report that meets the intent of both programs.

Comment #6: The forensic monitoring program does not consider access issues due to snow or road suitability for winter use.

Response: The MRP addresses this issue in multiple places within the document, accounting for road access issues due to weather or other uncontrollable factors, including worker safety. Justification is required for not conducting forensic monitoring. However, clarification will be added to the document regarding avoiding potential water quality problems during site access.

Comment #7: What is the data source for precipitation and storm event monitoring triggers? Clarify the term "water year."

Response: The MRP will be updated to specify the data source as "the nearest federal or State weather station." This data is provided on-line. The hydrologic water year will be specified as being from October 1 through September 30 the following year.

Comment #8: What is the rationale for using sediment visible 3 channel widths downstream as the definition for significant discharge?

Response: The number we had chosen allowed for a consistent standard to be applied to varying stream sizes. However, any visible evidence of sediment in the stream is a violation and should be documented. The waiver MRP has been modified to say: "Significant sediment discharges are also defined as sediment inputs into a watercourse that are visible in the stream channel downstream of where the discharge occurred."

Comment #9: Why is USFS excluded from the exemption from forensic and effectiveness monitoring under MRP section I.B.?

Response: Language will be inserted in to the MRP to include the USFS under this exemption.

Comment #10: Availability of monitoring data for the past years of the Timber Waiver?

Response: The submission of monitoring data is a new requirement of the timber waiver. Recent legislation requires us to include monitoring requirements in all waivers (CWC 13269(a)(2)).

Comment #11: Shouldn't the waiver process be more coordinated statewide? Why is noncommercial added to the Lahontan waiver?

Response: Each regional circumstance is different (projects, water quality priorities, environmental conditions). We modeled our waiver after Region 5 in the ways that were feasible for our region. There is a tremendous amount of fuels hazard reduction projects occurring within the Lahontan Region. The Waiver allows for expedited permitting of these projects. Otherwise, these projects would be subject to individual WDRs.

Commenter: Sharon Duggan, Environmental Protection Information Center (EPIC)

Comment #1: Concern regarding that waivers "can be issued on the basis that a private land timber harvest operation is expected to be in compliance with the Forest Practice Act and its rules" and "when that determination is premised upon rules which are not considered best management practices."

Response: The waiver does not solely rely upon the Forest Practice Act in order to protect water quality. In addition to meeting Forest Practice Act requirements, the Water Board has imposed additional conditions to help ensure water quality protection, such as utilizing qualified professionals to evaluate project impacts and develop mitigation, imposing operational restrictions in sensitive areas/conditions, and reporting to the Water Board to monitor the project. The proposed monitoring program will also help to determine whether discharges are occurring, and the timber waiver requires corrective actions be taken when violations are present or there is a threatened discharge. By

having a waiver, rather than requiring all project proponents to get individual waste discharge requirements (no matter how small or relatively benign the project), staff are able to dedicate more time to projects that could have the potential for significant water quality impacts. There are numerous criteria that projects must meet in order to be eligible for a waiver. Also, we can require additional measures and monitoring where warranted. Staff can determine that projects with significant potential to harm water quality not receive a waiver and require individual WDR's.

Comment #2: Personnel and financial resources are lacking to adequately review and monitor each and every waiver submission.

Response: It is true that staff resources are limited. However, we are required by law to regulate all potential nonpoint source discharges, and in this case, we believe a waiver is the most efficient and effective way to do it. By developing a waiver containing general eligibility criteria and conditions, rather than requiring every project proponent go to our Board to get Individual Waste Discharge Requirements (no matter how benign the project) significant staff resources are saved. This way staff can focus their time on projects posing the greatest potential environmental impacts.

Comment #3: The USFS's Cumulative Watershed Effects (CWE) analysis is inadequate. Project implementation is not effectively monitored.

Response: The waiver does not rely solely on the USFS CWE to evaluate project effectiveness. The proposed waiver requires implementation, forensic, and effectiveness monitoring to evaluate whether mitigation measures are preventing sediment inputs.

Comment #4: As exemplified by an attached court case, there is concern regarding predicted impacts from global warming, which are expected to affect climate, and in turn water quantity and quality. Any waiver of discharge requirements must calculate the relationship between the loss of the forests to the loss of water quality related to global warming.

Response: We recognize the significance of the global warming problem. Efforts are being undertaken through our Lake Tahoe TMDL program (and possibly other watersheds in the future) to model water quality impacts related to global warming. Although, scientific methods have not been developed to evaluate potential global warming impacts from tree removal within the Lahontan Region. The Waiver is intended to allow forestry activities to commence in a way that protects water quality. The waiver will be updated within 5 years. If additional information becomes available showing a clearer link between global warming and forestry activities, and how to evaluate such impacts, we will be able to incorporate further conditions/restrictions in to the waiver. The Waiver also has a termination clause if additional circumstances emerge that threaten to create water quality impacts that are not addressed by waiver conditions. Further, the Water Board has limited authority in regards to how many trees can be removed, unless there are concerns regarding potential discharges of sediment due to erosion, or impacts to beneficial uses in riparian areas/wetlands/SEZs.

Amendment to Comments as of 1/30/07 – The comments and responses below were inadvertently omitted from the last Response to Comments.

Commenter: Michael Donahoe, Tahoe Area Sierra Club

Comment #1: Increase on-site monitoring to include water quality samples during storm events. The proposed conditions would require photo points before and after, which is a good start, but bad projects bleed erosion and specified water quality samples would indicate whether the project was properly implemented, cleaned up or not.

Response: The monitoring program requires inspections to ensure BMPs are in place during project implementation and after storms. Photo-monitoring will be required in certain circumstances as well. In regards to water column monitoring, staff has observed that it can be expensive and sometimes inconclusive because of the variables encountered such as streamflow, access, timing of sampling in relationship to storm event or BMP failure. Reliance on inspections and visual monitoring of mitigation measures and requiring corrective actions should prevent adverse water quality impacts from occurring. For larger projects on a watershed scale, or where discharges have been observed, water column monitoring may be required. Soil testing has been required for demonstration projects where innovative technologies are being studied. The Executive Officer has the authority to impose additional monitoring where warranted to ensure water quality protection.

Comment #2: Increase on-site monitoring to review effectiveness at three and five years. While the proposed regulations would require on-site monitoring of water bars, and other protective measures, there needs to be better follow-up to these projects to assure that not only are the water quality protective measures working after one year, but that they are still effective at three and five years.

Response: We are requiring the majority of projects covered by the waiver to provide a post-project certification that states that all BMPs were implemented and effective. Categories 2-5 must also submit a monitoring report that evaluates the effectiveness of BMPs after the winter season. The waiver allows for the Executive Officer to extend the monitoring period for any enrolled project. The Water Board retains the authority to require mitigation where water quality problems exist, regardless of the timber waiver.

Comment #3: Increase post-project land management. Open areas, once logged, often become illegal playgrounds for OHVs, causing more damage than the timber removal. Conditions must be included in the regulations that assure that landowners manage their lands to protect the soils that are more vulnerable to erosion once the timber project is completed.

Response: Comment noted. Water Board staff has made efforts in this area, and intends to continue to work with project proponents to include specific measures in to Timber Harvest Plans and US Forest Service planning documents to avoid impacts from post-project recreational activities.

Comment #4: Due to the myriad of CEQA compliance documents that project proponents could choose to use, the new regulations should require that the specific CEQA document that the project proponent developed or is relying on is attached to the application to the Regional Water Quality Control Board. This will assure that in fact there is a CEQA document, and

gives the staff the ability to verify that there has been CEQA review.

Response: We have addressed this issue in Category 4. Larger scale projects will require submittal of additional CEQA documentation.

Comment #5: Require not only a topo map, but also a soils map that indicates the approximate boundaries of fragile and wet soil types. Specific soils in the Tahoe basin are more fragile than others, and some are wet near the surface for much of the summer, despite looking dry. These soils must be carefully protected during timber removal operations. Researching soils types is very easy in the Tahoe basin, as soils maps are available at the Tahoe Resource Conservation District, and the soils themselves are carefully described as to erodibility and moisture retention. Maps can also be downloaded at the NRCS websoil survey website.

Response: Staff recognizes the sensitivity of soils in the Tahoe Basin. A soils map is not required for most smaller-scale projects. Staff will rely on information submitted in the project application, as well as field verification, to determine the presence of SEZs. We are revising the application to provide us with more information to help us to assess whether SEZs may be present. A topographic map of the project site is required, so we may identify nearby streams. In most cases, we will schedule a field visit and evaluate the project if the application shows the project has sensitive areas. Many of the TRPA maps are outdated, and we find the field visits are necessary to confirm the presence of SEZs, since site conditions have changed over the years. Demonstration projects within SEZs will require soil sampling. Projects posing greater potential impacts may also be subject to an individual monitoring program containing a soil sampling requirement, which can be added at any time by the Executive Officer.

Comment #6: Hold the line on regulations for removing timber in Stream Environment Zones. Pressure to bring large motorized equipment into SEZs will probably increase. Please resist that pressure. Let's learn from the California Tahoe Conservancy which has proved the efficacy of wheelbarrows and hand crews. Until studies prove otherwise, mechanized equipment in SEZs is incompatible with saving Lake Tahoe and should continue to be prohibited.

Response: Comment noted. Staff has observed many successful hand thinning projects and the Waiver attempts to encourage hand thinning projects in sensitive areas while continuing to prohibit heavy equipment in these areas. Demonstration projects to test innovative technology equipment within SEZs are allowed, but are subject to an individual monitoring program.